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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/819,126	03/27/2001	James H. Errico	SLA0382 (7146.0107)	3921

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EXAMINER
SHEPARD, JUSTIN E

ART UNIT	PAPER NUMBER
2623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	09/819,126	ERRICO, JAMES H.
	Examiner	Art Unit
	Justin E. Shepard	2623

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>17 January 2008</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-11,13-15,25-28,50-53,57 and 59-64</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-11,13-15,25-28,50-53,57 and 59-64</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)
1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>12/12/07</u>.
4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/17/08 has been entered.

Response to Arguments

Applicant's arguments filed 1/17/08 have been fully considered but they are not persuasive.

Page 15, last paragraph:

The applicant argues that the "moods" disclosed in Herz are not assigned to users, and therefore do not meet the limitation of preferences. Herz discloses (column 17, line 65 to column 18, line 2) that the moods can be assigned to a user in the initial survey filled out by the user. The examiner is interpreting this section as disclosing that the "moods" are assigned to a specific user.

Page 16, paragraph beginning with "In actuality":

The applicant argues that the preferences disclosed by Herz do not overlap as suggested by the examiner. The example used by the applicant refers to the genre

preferences, and not the moods. It is the opinion of the examiner that the moods are

hierarchical as they are nested (column 17, lines 52-61) and these hierarchical

preferences are used to select programming (column 17, lines 27-34).

Page 16, paragraph beginning with "Moreover":

   This argument has been considered and responded to in the previous section.

Page 16, last paragraph:

   The applicant argues that the moods disclosed by Herz cannot be considered

preferences as specific values cannot be assigned to them. Herz discloses that the

moods can be assigned a higher value depending on how many subsets of moods are

used (column 18, lines 6-17). Also, as Herz discloses that preference information can

be assigned a negative value (column 10, lines 31-63) and the examiner interprets this

example of corresponding to the moods as a violent mood would cause a romantic

comedy to receive a negative rating for that time period.

Page 17, paragraph beginning with "If, however":

   The applicant argues that the moods disclosed by Herz are not hierarchical as

they do not encompass the moods of which they are a subset. As Herz discloses where

the moods are subsets of each other (column 17, lines 52-61), the examiner interprets

this as each mood including the preference from the mood above it, as without this

structure there would be no reason to have the moods be subsets of each other. One

example being that if speculative mood was not a subset of the peaceful mood, there

would be no reason for Herz to create a more complicated tree data structure as setting

a user's mood as speculative would be sufficient.

Page 18, last paragraph:

The applicant argues that the limitation of disregarding programs by using the

preference information is not found in claim 1, and therefore is not rejected in claim 57.

The interpretation of the examiner is that as claim 1 contains the limitation of selecting

programming based on the preferences, that this would also cover disregarding

programs as a program selection tool that selected all programming would not be a

program selection tool.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

1.   Claims 1-11, 13, 14, 25, 26, 27, 50, 51, 52, 53, 57, and 60 are rejected under 35

U.S.C. 103(a) as being unpatentable over Herz in view of Finseth.

Referring to claim 1, Herz discloses a method for selecting at least one of audio

and video (figure 1) comprising:

(a) receiving user attribute information that includes user preferences arranged in
hierarchical levels including at least a first level and a second level where said second
level of said user preferences includes preferences descriptive of one or more
preferences of said first level at a finer level of detail, wherein said first level includes
preferences that together encompass all preferences of said second level, and wherein
at least one of said preferences is at a first level and at least two of said preferences are
at a second level (figure 1, part 104; column 17, lines 52-61; column 27, lines 62-67;
column 28, lines 1-5);

(b) receiving program information corresponding to said at least one of said audio
and video, where said program information comprises attributes each corresponding to
a respective one of said user preferences (figure 1, part 102; column 28, lines 6-14);

(c) determining the desirability of said at least one of said audio and video based
upon jointly processing attributes of said program information attributes and jointly
processing preferences of said user attribute information (figure 1, part 106; column 27,
lines 62-67; column 28, lines 1-14), said preferences selectively include data indicative
of at least a first, a second, and a third option (column 10, lines 51-60; column 11, lines
6-12);

(i) said first option including a preference indicative of the positive desirability of
said at least one of audio and video (column 10, lines 51-60; column 11, lines 6-12);

(ii) said second option including a preference indicative of non-desirability of said
at least one of audio and video (column 10, lines 51-60; column 11, lines 6-12);

(iii) said third option including a preference indicative of indifference desirability, being neither said positive or non-desirability, of said at least one of audio and video (column 10, lines 51-60; column 11, lines 6-12);

(d) wherein said desirability is increased based upon said first option, said desirability is decreased based upon said second option, and said desirability remains the same based upon said third option (column 14, lines 20-33).

Herz does not disclose a method where said program information attributes each include hierarchical levels including at least a first level and a second level where said second level includes attributes descriptive of one or more attributes in said first level at a finer level of detail, wherein said first level includes preferences that together encompass all preferences of said second level, and wherein at least one of said program information attributes is at a first level and at least two of said program information attributes is at a second level; and wherein determining the desirability of said at least one of said audio and video based upon jointly processing preferences of at least said first level and said second level of said hierarchical levels of said program information attributes and processing preferences of at least said first level and said second level of said hierarchical levels of said user attribute information.

In an analogous art, Finseth teaches a method where said program information attributes include hierarchical levels including at least a first level and a second level where said second level of said program information attributes includes attributes descriptive of one or more attributes in said first level at a finer level of detail, wherein said first level includes attributes that together encompass all attributes of said second

level, and wherein determining the desirability of said at least one of said audio and video based upon jointly processing preferences of at least said first level and said second level of said hierarchical levels of said program information attributes and processing preferences of at least said first level and said second level of said hierarchical levels of said user attribute information (column 12, lines 47-48 and 53-57; figure 4, parts 98A; Note: as the hierarchical program attributes found in figure 4 of Finseth are found in the inputs to the agreement matrix calculation in Herz (column 28, lines 6-14) it is interpreted as these hierarchical attributes being jointly processed).

At the time of the invention it would have been obvious for one of ordinary skill in the art to use the hierarchical program attribute information taught by Finseth in the method disclosed by Herz. The motivation would have been to provide a more intuitive method of filtering the display of programs when provided in the EPG.

Claims 10, 50, 57, and 60 are rejected on the same grounds as claim 1.

Regarding claim **2**, Herz teaches wherein said first option is a non-binary preference value (column 10, lines 51-60).

Regarding claim **3**, Herz teaches wherein said second option is a non-binary preference value (column 10, lines 51-60).

Referring to claim 4, Herz teaches wherein said first option is positive preference value (column 10, lines 51-60).

Referring to claim 5, Herz teaches wherein said second option is a negative preference value (column 11, lines 6-12).

Regarding claim **6,** Herz teaches wherein said preferences are adjustable by a user (column 14, lines 20-33).

Regarding claim **7**, Herz teaches wherein said preferences include at least one default value (column 11, lines 56-60).

Regarding claim **8**, Herz teaches wherein said preferences are adjustable by a user (column 14, lines 20-33).

Regarding claim **9**, Herz teaches wherein said determining results in a value (column 10, lines 51-60).

Regarding claim **11**, Herz teaches wherein said determining the desirability includes: (a) calculating a first ranking value for said first program attribute information; (b) calculating a second ranking value for said second program attribute information; and (c) determining said relative ranking based upon said first ranking value and said second ranking value (column 14, lines 20-33).

Regarding claim **13,** Herz teaches wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and free from a second attribute; (b) said second program attribute information includes said first attribute and said second attribute; and (c) said determining said relative ranking indicates said second program as more desirable than said first program (column 14, lines 20-33).

Claim 25 is rejected on the same grounds as claims 1 and 13.

Regarding claim **14,** Graves teaches wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and free from a second attribute; (b) said second program attribute information includes said first attribute and a relatively smaller presence of said second attribute in comparison to said first attribute; and (c) said determining said relative ranking indicates said second program as more desirable than said first program (column 14, lines 20-33).

Regarding claim **26,** Herz teaches wherein said evaluating is free from combining multiple preference values into a single composite preference value (column 10, lines 51-60).

Regarding claim **27**, Herz teaches wherein a said composite score is determined for a plurality of said videos, and said video are ranked based, at least in part, upon said composite scores. (column 14, lines 20-33).

Regarding claim **51**, Herz teaches wherein said ranking determines said first video as more desirable for said user than said second video (column 10, lines 51-60).

Regarding claim **52,** Herz teaches wherein said ranking determines said second video as more desirable for another user than said first video (column 10, lines 51-60).

Regarding claim **53,** Herz teaches wherein said ranking is in a relativistic manner (column 10, lines 51-60).

2.   Claims 15, 28, 59, and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz in view of Finseth as applied to claim 10 above, and further in view of Graves.

Referring to claim 15, Herz and Finseth do not disclose a method wherein said determining the desirability includes and operation where, (a) said first program attribute information includes a first attribute and a second attribute, where said second attribute has a first relatively smaller presence than said first attribute in said first program; (b) said second program attribute information includes said first attribute and said second attribute, where said second attribute has a second relatively smaller presence than

said first attribute in said second program, where said first relatively smaller presence is

smaller than said second relatively smaller presence; and (c) said determining said

relative ranking indicates said second program as more desirable than said first

program.

In an analogous art, Graves teaches a wherein said determining the desirability

includes and operation where, (a) said first program attribute information includes a first

attribute and a second attribute, where said second attribute has a first relatively smaller

presence than said first attribute in said first program (See Fig. 3, Fig. 5 A program

could have a smaller value for one attribute versus another i.e. Actor #1 has a smaller

value (weight) than Story appeal); (b) said second program attribute information

includes said first attribute and said second attribute, where said second attribute has a

second relatively smaller presence than said first attribute in said second program,

where said first relatively smaller presence is smaller than said second relatively smaller

presence (See Fig. 3, Fig. 5 A program could have a smaller value for one attribute

versus another i.e. Actor #1 has a smaller value(weight) than Story appeal and a

program could have a smaller value for an attribute when compared to that value for

that attribute of another program); and (c) said determining said relative ranking

indicates said second program as more desirable than said first program (See Col. 6

lines 17-52 Col. 8 Eqn. 1 Based on the weighting and values of each attribute a second

program could receive a higher ranking than a first program).

At the time of the invention it would have been obvious for one of ordinary skill in

the art to add the preference modification taught by Graves to the method disclosed by

Herz and Finseth. The motivation would have been to enable the preferences to be more accurate, thereby making the system more enticing to possible customers.

Regarding claim **28,** Herz and Finseth do not disclose a method wherein said composite score is determined free from comparing said first score and said second score.

In an analogous art, Graves teaches wherein said composite score is determined free from comparing said first score and said second score (See Col. 8 Eqn 1 The composite score is the sum of the first score and the second score. Summing is free from comparison).

At the time of the invention it would have been obvious for one of ordinary skill in the art to add the preference modification taught by Graves to the method disclosed by Herz and Finseth. The motivation would have been to enable the preferences to be more accurate, thereby making the system more enticing to possible customers.

Regarding claim **59,** Herz and Finseth do not disclose a method wherein said evaluating is based upon a summation operation.

In an analogous art, Graves teaches wherein said evaluating is based upon a summation operation (See Col. 8 Eqn. 1). From the specification the AND function is an averaging function (Page 131 lines 13-14), the result of Graves summation divided by the number of elements summed (n).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **61,** Herz and Finseth do not disclose a method wherein at least one of said first operator and said second operator is an "OR" function.

In an analogous art, Graves teaches wherein at least one of said first operator and said second operator is an "OR" function (See Col. 8 Eqn. 1).   From the specification the "OR" function is a summation (Page 135 line 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the result of his summation equation was divided by the number of elements added together to create normalized grades.

Regarding claim **62,** Herz and Finseth do not disclose a method wherein said first operator and said second operator are "OR" functions.

In an analogous art, Graves teaches wherein said first operator and said second operator are "OR" functions (See Col. 8 Eqn. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz with the teachings of Graves so that the

result of his summation equation was divided by the number of elements added

together to create normalized grades.

Regarding claim **63,** Herz and Finseth do not disclose a method wherein said first

set and said second set depend from the same preference within said hierarchy.

In an analogous art, Graves teaches wherein said first set and said second set

depend from the same preference within said hierarchy (See Col. 8 Eqn. 1The first set

and second set are on the same level of the hierarchy and depend from the overall

preference).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Herz with the teachings of Graves so that the

result of his summation equation was divided by the number of elements added

together to create normalized grades.

Regarding claim **64,** Herz and Finseth do not disclose a method wherein said first

set and said second set have a different number of preferences.

In an analogous art, Graves teaches wherein said first set and said second set

have a different number of preferences (See Col. 8 Eqn. 1 i values 1 to n could be an

odd number divided into two sets).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to modify Herz with the teachings of Graves so that the

result of his summation equation was divided by the number of elements added

together to create normalized grades.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Justin E. Shepard whose telephone number is (571)

272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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JS

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